



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

Mailing address:
6714 Mail Service Center
Raleigh, NC 27699-6700

Street address:
1711 New Hope Church Rd
Raleigh, NC 27609-6285

June 20, 2019

Carrie Hollis
Office of State Budget and Management
Sent via email to Carrie.Hollis@osbm.nc.gov

RE: Rule 12 NCAC 02I .0306

Ms. Hollis:

At its meeting this morning, the Rules Review Commission voted pursuant to G.S. 150B-21.9 to ask the Office of State Budget and Management to determine if the above-referenced Rule has a substantial economic impact and therefore requires a fiscal note.

This Rule is an adoption and it imposes requirements regarding company police officer badges, patches, and advertising on vehicles. A copy of the Rule reflecting all requested technical changes is enclosed with this correspondence. At the Commission meeting, members of the public stated that the companies regulated by this Rule would have to spend money to comply with its requirements.

A response to this request pursuant to G.S. 150B-21.9 will assist the Commission in determining whether the agency adopted the Rule in accordance with the Administrative Procedure Act.

The Commission objected to the Rule at the meeting; as such, the Rule will remain under the Commission's review until the agency acts pursuant to G.S. 150B-21.12. The Commission is aware that there are multiple demands on your time, and respectfully requests a response as soon as you are able to do so.

Thank you for your assistance in this matter. Please let me know if I can be of any assistance or if you desire further information regarding the Commission's decision.

Administration
919/431-3000
fax: 919/431-3100

Rules Division
919/431-3000
fax: 919/431-3104

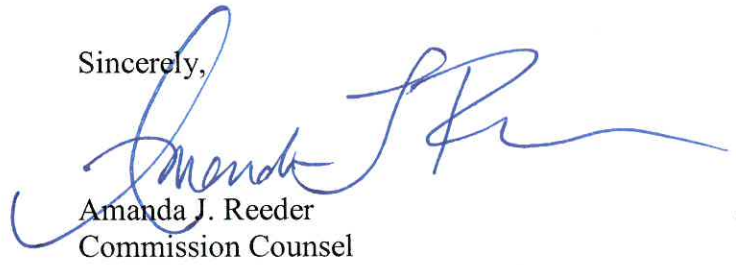
Judges and
Assistants
919/431-3000
fax: 919/431-3100

Clerk's Office
919/431-3000
fax: 919/431-3100

Rules Review
Commission
919/431-3000
fax: 919/431-3104

Civil Rights
Division
919/431-3036
fax: 919/431-3103

Sincerely,

A handwritten signature in blue ink, appearing to read "Amanda J. Reeder", is written over the typed name and title.

Amanda J. Reeder
Commission Counsel

cc: Charminique Williams, Rulemaking Coordinator

Enclosure Rule 12 NCAC 02I .0306

12 NCAC 02I .0306 is adopted with changes as published in 33:17 NCR 1765-1767 as follow:

12 NCAC 02I .0306 BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION

(a) Badges:

(1) All on-duty company police officers ~~shall, shall when on duty,~~ wear a badge bearing the name of the certified company police agency and the general title of Company Police Officer or the specific title of:

(A) Railroad Police Officer;

(B) Campus Police Officer; or

(C) Special Police Officer.

(2) The badge shall be carried at all times by the company police officer. The badge shall be worn in plain view to the public, except in situations where the officer's weapon is concealed under the provisions set forth in Rule .0304 of this Section.

(3) No identification card indicating the person is a company police officer shall be issued to or possessed by any company police officer except in the form of identification issued to the officer by the Attorney General.

(4) The Department Head shall ensure that employees who have not been commissioned as company police officers do not wear a badge used by the company police agency.

(b) Uniforms:

(1) All company police officers shall, when on duty, wear the uniform of the company police agency unless directed to wear other attire by the Department Head.

(2) Those company police agencies ~~which that~~ employ both company police commissioned and non-commissioned security personnel shall provide the commissioned company police officers with a uniform of a different color that would distinguishes the company police officer from other employees of the agency. Furthermore, the Department Head shall ensure that employees who have not been commissioned as company police officers do not wear a uniform identifying them as company police officers.

(3) The uniform of the company police officer shall bear a shoulder patch or some equivalent item containing the following information:

(A) the terms "Railroad Police Officer," "Campus Police Officer," "Special Police Officer," or "Company Police Officer"; and

(B) the name of the company police agency.

(c) Vehicles:

(1) Each marked vehicle used by a company police agency subject to this Rule shall display the agency name and one of the following agency classifications: "Railroad Police," "Campus Police," "Special Police," or "Company Police".

(2) The agency classifications ~~required by~~ set forth in Subparagraph (a)(1) of this Rule shall be of uniform size with any other writing on the company police vehicle.

1 (3) The Department Head shall ensure that employees who have not been commissioned as company
2 police officers do not operate any marked vehicle used by the company police agency.

3 (4) The Department Head shall ensure that employees who are not commissioned as a company police
4 officer do not operate any company police vehicle with a blue light contained therein.

5 (5) The Department Head shall ensure that any marked company police agency vehicle is not operated
6 outside of those property jurisdiction limitations set forth in G.S. 74E-6, unless such operation is
7 performed by an on-duty commissioned company police officer in the performance of his or her
8 official duties and authorized by the Department Head.

9 (d) The requirements contained in this Rule shall not apply to those agencies and commissioned officers who are
10 regulated by the Tennessee Valley Authority, United States Nuclear Regulatory Commission, or the Railroad Police
11 Certification Act of 1990.

12
13 *History Note: Authority G.S. 74E-4; 74E-7;*

14 *Eff. August 2, 1993;*

15 *Amended Eff. February 1, 2008;*

16 *Agency did not readopt rule pursuant to G.S. 150B-21.3A by RRC established deadline of January*
17 *31, 2018;*

18 *Adopted Eff. July 1, 2019.*
19
20



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June 20, 2019

Charminique Williams, Rulemaking Coordinator
Department of Justice
Sent via email only: cdwilliams@ncdoj.gov

Re: Objection to Rules 12 NCAC 02I .0213 and .0306

Dear Ms. Williams:

At its meeting today, the Rules Review Commission objected to the above-captioned rules in accordance with G.S. 150B-21.10.

The Commission objected to Rule 02I .0213 for lack of statutory authority and ambiguity. Specifically, the RRC found that the Rule is ambiguous as it does not set forth the process by which the Attorney General or the designee will act to revoke or deny the summary suspension. Further, it is unclear whether this will be a summary action or if it will include a hearing. Finally, the RRC found that the agency lacks statutory authority to take this action if it is not taken in compliance with G.S. 150B, Article 3, as required by G.S. 74E-4(5).

The RRC objected to Rule 02I .0306 for failure to comply with the APA. Specifically, the agency stated that no fiscal note was required in its Notice of Text, published March 1, 2019. However, members of the regulated public stated that the adoption of this Rule would create a substantial economic impact. Pursuant to G.S. 150B-21.4(b1) and 150B-21.9(a)(4), the RRC found that the agency did not comply with the APA. The RRC will send this Rule to OSBM pursuant to G.S. 150B-21.9(a) for further review.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

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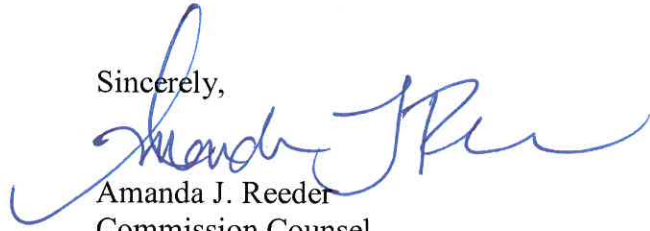
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Amanda J. Reeder
Commission Counsel

cc: Randy Munn, Department of Justice

REQUEST FOR TECHNICAL CHANGE

AGENCY: Department of Justice

RULE CITATION: 12 NCAC 02I .0306

DEADLINE FOR RECEIPT: Wednesday, June 5, 2019

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following technical changes be made:

On the Submission for Permanent Rule form:

In Box 2, please insert the name of the Rule.

Please complete the information requested in Box 11 by typing in the name and title.

In the Rule:

In (a)(1), line 5, why not state "All on-duty company police officers shall wear a badge..."?

In (a)(2), is the badge to be carried at all times, or at all times when on duty?

On line 11, define "plain view"

I do not understand the cross-reference to the concealed weapon here. Are you referring to some sort of undercover work?

In (a)(3), line 13, what do you mean by "indicating"? Do you mean "stating"? Or are you trying to address a card that would give an impression the person is a company police officer, such that "indicating" is more appropriate here?

In (a)(4) and elsewhere the term is used, I take it "Department Head" is the term as defined in 02I .0104(10)?

In (b)(2), line 21, replace "which" with "that"

In (b)(2), line 23, what do you mean by "would distinguish"? Why not simplify this language and state "that distinguishes"

In (c)(2), line 36, what do you mean by "required by Subparagraph (a)(1)"? Technically, that addresses the classifications. G.S. 74E-6(b) creates/establishes these. Please clarify what you intend to say here.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 21, 2019

In (c)(5), line 7, state "his or her"

Why do you need Paragraph (d)? Aren't these all federal entities? What part of G.S. 74E allows the Department to regulate federal agencies?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: May 21, 2019

12 NCAC 02I .0306 is adopted as published in 33:17 NCR pages 1765-1767:

12 NCAC 02I .0306 **BADGES, UNIFORMS, VEHICLES AND OFFICER IDENTIFICATION**

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18 Adopted Eff. July 1, 2019.
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